

REMARKS

The Examiner's final Office Action dated December 2, 2003, has been received and the contents carefully noted. The Applicants respectfully request, upon taking the instant application up for action, that an interview be granted at the Examiner's convenience for the purpose of discussing the above amendments and emphasizing the deficiencies of the references cited, particularly the Bushek et al. reference, noted below.

Further, the Applicants respectfully submit that this response is timely filed (with a Petition for Extension of Time for Three Months from the final Office Action of December 2, 2003, and a Notice of Appeal) and is fully responsive.

By the above actions, claim 1 has been amended to more succinctly set forth the invention. Support for the amendment can be found in original Figure 3 and in the specification at paragraph [0043], which clearly teaches that the micromanipulator 18 is fixed to the cranial vault (via screw), and, after securement thereto, rotational movement 29 is accomplished via tool 31 and axial movement along guide 28 is accomplished by rotating threaded spindle 34. In view of these actions and the following remarks, reconsideration of this application is now requested.

Initially, it is noted that the Office Action of May 9, 2003, included rejections of claim 1-7, 10, 11, 19 and 21, under either 35 U.S.C. § 102 or § 103, as being unpatentable over Bushek et al. ('755) alone or in view of Hakansson et al. ('170). In the Amendment of September 8, 2003, the Applicants presented no amendment to original claims 1-21, but added new claim 22. However, in the final Office Action of December 2, 2003, the Examiner stated, first on the PTO-326 form, at box 6), that claims 1-7, 10, 11 and 19-22 are rejected. The Office Action then states at page 2, paragraph 2, that "Claims 1-7 and 19-22 are rejected under 35 U.S.C. § 102" and then states "In reference to claims 1-7 and 19-22, Bushek et al. discloses..." That is, original claim 20, previously unexamined by the Examiner on the Office Action of

May 9, 2003, has now been included in each statement of the rejection in the Office Action of December 2, 2002. Further, while the features of claim 20 have not been specifically addressed by the rejection of claims 1-7, 10, 11 and 19-22, it is also noted that the specific features of claims 2, 3, 4, 5, 10 and 11 are also not specifically addressed by the Examiner's statements of the rejection or the "Response to Arguments" in the December 2, 2003, Office Action. Since the rejection of claim 20 was not necessitated by any amendment to the claims, or by any newly cited reference in an Information Disclosure Statement, the finality of the December 2, 2003, Office Action is clearly improper according to the specific guidelines in MPEP Chapter 706.07(a):

Under present practice, second or any subsequent actions on the merits shall be final, **except** where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 C.F.R. 1.97... (Emphasis added)

Further, since the Examiner has not specifically addressed the features of claims 2, 3, 4, 5, 10, 11 and 20, a "clear issue" has not been developed in the record between the Examiner and the Applicants, as is required for finality by MPEP Chapter 706.07:

Before final rejection is in order a **clear issue should be developed between the examiner and applicant**. To bring the prosecution to as speedy conclusion as possible and at the same time to deal justly by both the applicant and the public, the invention as disclosed and claimed should be thoroughly searched in the first action and the **references fully applied**... (Emphasis added)

For these reasons, the Applicants respectfully request withdrawal of the "final" status of the Office Action of December 2, 2003.

The Applicants continue to assert that the rejection of claims 1-7 and 19-22, under 35 U.S.C. § 102, as being anticipated by Bushek et al., is inappropriate for the reasons as set forth in the Amendment of September 8, 2003, and for the following reasons.

Specifically, the Examiner states in the "Response to Argument" that the fixing means of the "micromanipulator (10)" is the "bone screws, staples, adhesives, etc." This interpretation, according to the Examiner, permits the "support assembly (10)" to be interpreted as the micromanipulator of the present claims in that the positioning of the transducer occurs "by the original mounting of the support assembly (10)." The Applicants urge that not only is this interpretation of the Bushek et al. patent completely unsupported by the disclosure of this patent, but the interpretation of Bushek et al. set forth by the Examiner fails to give the claim limitations their "plain meaning" which is consistent with that set forth in the specification.

That is, in order for the Examiner to assert that Bushek et al. support assembly (10) is the micromanipulator and the micromanipulation occurs via the mounting "screws" during the original mounting of the support assembly (10), the patent must contain some teaching that the "screws" operating in cooperation with mounting holes (142) provide a "micromanipulation" function. However, a review of the patent reveals that only the element (168) in conjunction with element (165) provides axial micromanipulation function as described at column 11, lines 38-44, and column 12, lines 18-25; while ball element (139), retaining nut (120) and socket (150) provide the rotational micromanipulation. In contrast to these very specific teachings of Bushek et al., the support assembly (10) is taught to be mounted to the cranial structure by support holes (142), mounted in one end of the hanger (150), which are illustrated in each embodiment to be smooth (un-threaded) sidewalls. Further, since the patentees also do not discuss the structure of the securing means, e.g., "screws", employed to secure the hanger (150), it is evident that the original securement of the support assembly (10) cannot perform the micromanipulation function described in the specification at paragraphs [0014-0016] and [0047].

If the Examiner is to maintain the position that the support assembly (10) is the "micromanipulator" of the instant claims, it is respectfully requested that the

Examiner specifically identify some specific structure of the support assembly (10) and the securement means, e.g. "screws", which provide micromanipulation, and in particular provide **rotational** and **axial** micromanipulation **after** securement of the support assembly (10) to the cranial unit as presently claimed.

For the above reasons, the interpretation of Bushek et al. in the present Office Action is still believed to be inappropriate, and accordingly, the rejection of claims 1-7 and 19-22, under § 102(e), as being anticipated by the teachings of Bushek et al. is inappropriate and must be withdrawn.

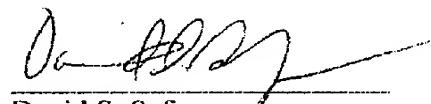
With regard to the rejection of claims 10 and 11, under § 103(a), as being obvious in view of the teachings of Bushek et al. combined with the teachings of Hakansson et al., this rejection is also traversed since Hakansson et al. was not relied upon to teach the features of the applicants' claims, which are not present in the Bushek et al. patent, as noted above and in the Amendment of September 8, 2002. Nonetheless Hakansson et al. fail to cure the noted deficiencies in Bushek et al.

That is, Hakansson et al. do not provide any teaching or suggestion to provide the transducer assembly of Bushek et al. with a micromanipulator for rotationally and axially positioning the transducer and for fixing the transducer in a position set by the micromanipulator after the micromanipulator is fixedly attached to a cranial vault, and a releasable coupling unit disposed between the transducer and the micromanipulator as presently claimed. For this reason, the rejection of claims 10 and 11, under § 103(a), is also inappropriate and must be withdrawn.

While the present application is now believed to be in condition for allowance, should the Examiner find some issue to remain unresolved or should any new issues arise, which could be eliminated through further discussions with Applicants' representative, then the Examiner is invited to contact the undersigned by telephone in order that the further prosecution of this application can thereby be expedited.

Lastly, it is noted that a separate Extension of Time Petition (three months) accompanies this response along with an authorization to charge the requisite fee to Deposit Account 19-2380 (740105-78). However, should that petition become separated from this Amendment, then this Amendment should be construed as containing such a petition. Likewise, any overage or shortage in the required payment should be applied to Deposit Account No. 19-2380 (740105-78).

Respectfully submitted,



David S. Safran
Registration No. 27,997

NIXON PEABODY LLP
401 9th Street, N.W., Suite 900
Washington, D.C. 20004-2128

Telephone: (703) 827-8094

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